

If the request for a loan guarantee concerns a subcontractor that is financially weak in comparison with its contractor, the Government's interests may be fostered by the contractor making progress payments to the subcontractor. If so, the agency shall try to arrange for the contractor to provide the progress payments. As a result, the need for the loan guarantee may be reduced or eliminated and the contractor would bear part or all of the risk of loss arising from the selection of the subcontractor.

Subpart 32.4--Advance Payments for Non-Commercial Items

32.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404. This subpart does not apply to commercial advance payments, which are subject to Subpart 32.2.

32.401 Statutory authority.

The agency may authorize advance payments in negotiated and sealed bid contracts if the action is appropriate under--

- (a) Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);
- (b) The Armed Services Procurement Act (10 U.S.C. 2307); or
- (c) Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, November 14, 1958 (3 CFR 1958 Supp. pp. 72-74) (see Part 50 of the Federal Acquisition Regulation (FAR) for other applications of this statute).

32.402 General.

- (a) A limitation on authority to grant advance payments under Pub. L. 85-804 (50 U.S.C. 1431-1435) is described at FAR 50.203(b)(4).
- (b) Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in 32.403(a) and (b), advance payment is the least preferred method of contract financing (see 32.106) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts. Loans and credit at excessive interest rates or other exorbitant charges, or loans from other Government agencies, are not considered reasonably available financing.
- (c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments.
 - (1) The statutory requirements are that--
 - (i) The contractor gives adequate security;
 - (ii) The advance payments will not exceed the unpaid contract price (see 32.410(b), subparagraph (a)(2)); and
 - (iii) The agency head or designee determines, based on written findings, that the advance payment--
 - (A) Is in the public interest (under 32.401(a) or (b)); or
 - (B) Facilitates the national defense (under 32.401(c)).
 - (2) The standards for advance payment determinations are that--

- (2) Loans with reasonable interest rates or finance charges are not available to the contractor; or
- (3) Contracts involve operations so remote from a financial institution that the institution could not be expected to suitably administer a guaranteed loan.
- (g) Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see 32.104(b)).
- (h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

32.404 Exclusions.

- (a) This subpart does not apply to advance payments authorized by law for--
 - (1) Rent;
 - (2) Tuition;
 - (3) Insurance premiums;
 - (4) Expenses of investigations in foreign countries;
 - (5) Extension or connection of public utilities for Government buildings or installations;
 - (6) Subscriptions to publications;
 - (7) Purchases of supplies or services in foreign countries, if--
 - (i) The purchase price does not exceed \$10,000 (or equivalent amount of the applicable foreign currency); and
 - (ii) The advance payment is required by the laws or government regulations of the foreign country concerned;
 - (8) Enforcement of the customs or narcotics laws; or
 - (9) Other types of transactions excluded by agency procedures under statutory authority.
- (b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) of this section authorized under statutes relevant to their agencies.

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

- (a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in 50.101(a), also include making advance payments. These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts.
- (b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any bid requiring that advance payments be provided as a basis for acceptance.
- (c) When advance payments are requested, the agency may--
 - (1) Enter into the contract and provide for advance payments conforming to this Part 32;